IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 129

GEORGE W. DOUD, DONALD Q. McDONALD, AND J. WESLEY CARLSON, DOING BUSINESS AS BONDIFIED SYSTEMS, AND EUGENE DERRICK,

Appellants,

vs.

ORVILLE HODGE, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR APPELLEES

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INDEX

Table of Cases Cited

dation between the American Express Company and the Merchants Union Express Company. Its consolidated worth then was 18 million dollars. The Articles of Merger and other exhibits show that the American Express Company is an unincorporated association organized under the laws of New York, with officers; a board of directors, a constitution and by-laws; shares of stock and stockholders; a stock transfer agent and transfer book; a chairman and vice-chairman of the Board; an executive committee; and substantially all other corporate amenities. (Defs.' Deposition Exs. 1, 2, 3; R. 96, 389, 400, 434.)

Certified audit reports of the company for the years 1939, 1941, 1942, 1943, 1944, 1949, 1950, 1951, 1952 and 1953, reflect in detail the assets, liabilities, income, tangible net worth, net profit, surplus and reserves for each of those years. (Defs.' Deposition Exs. 4 to 13; R. 96, 438-502.)

In 1939, its assets totalled $76,529,766.68; surplus and reserves aggregated $6,990,996.39; income totalled $6,751,-204.63; net income amounted to $1,582,451.18. (R. 474-476.)

In 1953, its consolidated assets totalled $564,225,148.00; surplus and reserves aggregated $17,563,840.00; income totalled $36,069,592.00; and net income after taxes amounted to $4,284,082.00. (R. 466.)

It handles world-wide travel service; the sale and servicing of travelers' checks, money orders; and foreign remittances. It handles import and export shipments. It was the general foreign freight and passenger agent of the New York Central Railroad. It was the depository of the United States Treasury Department before and after the Second World War, and maintained with the Federal Reserve Bank in New York government bonds to offset government deposits with it dollar for dollar. (R. 321, 322.)

Statutes Cited.

Text Book Cited.

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BRIEF FOR APPELLEES.

MAY IT PLEASE THE COURT:

The inadequacy of the facts presented by appellants necessitates a further statement of the case.

STATEMENT OF CASE.

The answer filed by appellees to the amended complaint denied the material allegations thereof; detailed the scope and extent of the financial operations of the over 600 community currency exchanges licensed and operating under the Illinois Currency Exchange Statutes; alleged that the Statute was not accurately or sufficiently stated in the

amended complaint; recited something of the history, size and financial strength of the American Express Company, and showed that the Illinois legislature in the enactment of the Statute may have reasonably believed that the substantial differences that existed between appellants and the American Express Company with reference to their character, solvency, financial responsibility, age, experience, business and monetary facilities, were pertinent to the subject with respect to which the challenged classification was made, and that the evil at which the Statute was in part directed, namely, the issuance and sale of worthless money orders by financially irresponsible parties, did not exist in the operation of the American Express Company to the same extent as in the operations of the local currency exchanges including those of the kind allegedly operated by appellants. (R. 25-34.)

The answer did not admit that appellees threatened that any attempt by appellants to operate their business would bring down upon appellants *actions* in the State courts, but admitted they threatened to enforce the Statute in the event appellants violated the same, and averred that the threat was not directed against any particular conduct of appellants; that at the time thereof, appellants either had not violated the Statute or appellees were not apprised of any violation; that appellees were not informed of any violations until the amended complaint informed them of the same; that appellees have taken no legal steps against appellants to enforce the Statute. (R. 29.)

The answer further alleged that appellants have a speedy and adequate remedy in the State courts; that they do not show the imminence and immediacy of any enforcement of the Statute, or any exceptional or irreparable injury they might sustain if they prosecuted their action in the State courts; and that they have not presented to the Illinois Supreme Court the constitutional question now urged. (R. 30.)

The answer further set forth that appellants practiced fraud and deception upon the public in the conduct of their business; that the wording of their money orders was reasonably and well calculated to deceive and defraud the people of Illinois into the belief that appellants were licensed and bonded in accordance with the Statute; and that they do not come into equity with clean hands. (R. 30-33.)

Although considerable evidence, including depositions and numerous exhibits, was adduced at the trial, little reference thereto is made by appellants, or in the District Court's findings, although findings in that regard were requested.

The Illinois Currency Exchange Statute was enacted in 1943, and amended in various and substantial particulars in 1945, 1947, 1949, and 1951. (Ill. Rev. Stat. 1955, Chap. 16½, paragraphs 30-56.3, Secs. 01-30.)

The statutory provisions set forth in appellants' appendix are insufficient, and the recitation of excerpts of Sec. 16 is misleading, because it would appear therefrom that the State Auditor charges $20 a day for his annual investigation of the currency exchange business, while that section actually provides no charge for the investigation, but a charge of $20 a day only where he subpoenas witnesses and conducts an examination of witnesses. Appellants emphasized in the Court below the burdensome expense entailed by the *non-existent investigation* fee.

Hence we have attached in the appendix to this brief a complete copy of the Statute.

The Statute contains a broad, comprehensive plan for the regulation and inspection of currency exchanges from their inception to their dissolution or liquidation, all to the end that the public in dealing with them and transferring funds to them, may be protected against the dishonesty, bad

judgment, or misfortune of the currency exchange operators, which it may reasonably be assumed, furnished ample background for the passage of this legislation.

As appears from Sec. 01 of the Statute, the currency exchange business in Illinois has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of the State that the legislature found that it was affected with a public interest affecting the convenience, general welfare, and economic interest of the people of Illinois.

Illinois was the first state to adopt such legislation. For reasons undisclosed by the record, it has proved a fertile ground for the growth of the currency exchange business. Wisconsin in 1945 copied the 1943 Statute, but not the subsequent amendments, and it has only 7 currency exchanges (R. 110, Judge Hoffman's statement), while Illinois as of September 30, 1952, had 607 licensed currency exchanges. (R. 293; Defs.' Ex. 7, R. 96, 289.) Other states like California, New York and New Jersey have legislated in recent years in relation to one or both phases of the currency exchange business, but their statutes bear little resemblance to the Illinois Statute.

Sec. 1 of the Illinois Statute defined "community currency exchange" as any person, firm, etc. except State and National banks, engaged at a fixed and permanent place of business, in the business of cashing checks or other evidences of money, for a fee or other consideration, or engaged in the business of selling or issuing money orders *under his or their or its name*; or any other money orders (other than United States Post Office money orders, American Express Company money orders, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders); or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

Sec. 3 permitted currency exchanges to render such additional services as obtaining automobile licenses, rendering a photostat service, a notary service, selling travelers cheques obtained from a banking institution under trust receipt, and accepting for payment local utility bills.

Sec. 4.1, passed in 1951, defined "community", and provided that if the issuance of a license to a community currency exchange would not promote the convenience and advantage of the community in which the business is proposed to be conducted, then the application therefor shall be denied.

Sec. 5 required of community currency exchanges the furnishing annually in graduated amounts ranging from $3,000 to $25,000, of performance bonds to the State Auditor for the benefit of creditors of the currency exchange.

Sec. 6 required the furnishing to the State Auditor of insurance policies ranging from $2,500 to $35,000, covering the currency exchange against loss by burglary, larceny, robbery, forgery or embezzlement.

Sec. 7 required that each community currency exchange have a minimum of $3,000 of its own cash funds available at all times, exclusive of and in addition to funds received for exchange or transfer; and in addition shall have on hand at all times an amount of liquid funds sufficient to pay on demand all outstanding money orders issued by it.

Sec. 8 provided that a currency exchange shall not be conducted as a department of another business, but must be an entity, financed and conducted as a separate business unit.

Sec. 18 defined "fixed and permanent place of business" by requiring a lease of at least 6 months duration, or other suitable evidence of permanency.

In *McDougall* v. *Lueder*, 389 Ill. 141, the State Supreme Court, in upholding the constitutionality of the 1943 Statute

against an attack by community currency exchange operators, said, p. 149:

> "Any business conducted primarily or entirely by accepting the funds of other people, undertaking to keep the funds intact for an indefinite length of time * * * is one in which the public deserves more protection than only the judgment, skill and good luck of the proprietor to protect it against loss. The opportunities for loss through embezzlements, larceny, the unauthorized use of funds, including bankruptcy through the mishandling of funds, is obvious."

When it is realized that the volume of money orders, which are usually nothing more than the *personal* checks of the operators, issued by 607 licensed community currency exchanges in Illinois for the year preceding September 30, 1952, exceeded 445 million dollars (R. 294; Defs.' Ex. 7, R. 96, 289), the magnitude of the evil sought to be regulated becomes evident.

In 1951, the State legislature added certain findings contained in Sec. 01, which in addition to declaring that the currency exchange business was affected with a public interest, found that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and that it is in the public interest to promote and foster the community currency exchange business and *to assure the financial stability thereof*.

In upholding the validity of Sec. 4.1 *supra*, the State Supreme Court in *Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89, 95, said:

> "The unrestricted issuance of licenses in a community to the point of saturation would tend to decrease the net earnings of each exchange to the point of insolvency of one or more of the exchanges with the inevitable result of losses to the public."

In the face of such a pronounced state public policy, appellants Dowd, McDonald and Carlson now seek to nullify it by proposing to establish on a shoestring capital investment of $10,000, five hundred or more agencies in Illinois for the sale of their *personal* money orders under the name of "Bondified". (R. 12, 19.)

Appellants' Bondified Systems.

The history and activities of appellants who challenge the Statute, are worthy of some notice.

On May 18, 1953, they organized under the laws of Minnesota a corporation known as Currency Services of Illinois, Inc. on a stated capital of $10,000 to, manufacture, sell and distribute money orders, and other currency service materials, and to appoint agents in the *State of Illinois* to sell and distribute the money order and materials. (Defs.' Ex. 2, R. 96, 259, 260.)

Their application to the Secretary of State of Illinois for a license to do business in Illinois was denied. (Pls.' Exs. 1 and 2, R. 95, 126, 127.)

They thereupon changed the corporate name to Bondified Systems, Inc., amended their articles of incorporation so that the purposes would not be construed to authorize the corporation to conduct a currency exchange business as defined in the Statute now challenged (Defs.' Ex. 2, R. 96, 259, 266), and thereafter, on July 30, 1953, secured a certificate of authority to do business in Illinois. This certificate expressly prohibited the corporation from engaging in the currency exchange business. (Defs.' Ex. 3, R. 96, 269, 272.)

Under date of August 6, 1953, Bondified Systems, Inc., of which appellants, except Derrick, were all the stockholders and directors (R. 173, Pls.' Ex. 10, R. 95, 169, 173), secured a franchise from Checks, Inc., a Minnesota corpo-

ration, to sell and distribute to the public directly and through agencies appointed by Bondified Systems, Inc. in certain areas in Illinois and Indiana, "Bondified" money orders. Bondified Systems, Inc., agreed to capitalize with not less than $40,000 paid in. (Pls.' Ex. 5, R. 95, 135.)

Checks, Inc. was capitalized at $50,000. (Defs.' Ex. 6, R. 96, 277, 287.)

Under date of August 15, 1953, Bondified Systems, Inc., assigned to appellants, a limited partnership called Bondified Systems, that part of the franchise relating to Illinois. (Pls.' Ex. 6, R. 95, 143.)

Under date of November 14, 1953, Bondified Systems, Inc. and Bondified Systems, the partnership, entered into an agreement reciting that both had the same office, and that it would be more economical and in their best interests to operate both businesses as one entity only, with but one set of operating employees, books of account, bank accounts, employee tax returns and related operational elements. They agreed that the partnership would be the operating agent of the corporation in Indiana; that both businesses would operate as one entity; that $30,000 of the moneys appellants were to pay for their stock in the corporation, was to be diverted into the partnership as their capital contributions to the partnership; and that the partners could terminate the partnership at any time by assigning the partnership business to the corporation, and receiving therefor capital stock in the corporation to the amount of $10,000 par value each. (Pls.' Ex. 10, R. 95, 169.)

Three bank accounts were opened. Bondified Systems, Inc. opened its corporate account; and the partners opened a so-called "earmarked" account designated as the Bondified Special Account, and their operating account, both for the use and benefit of the corporation and the partnership. (R. 61, 62; Pls.' Ex. 8, R. 95, 157, 159, 161.)

The Special Account out of which the money orders of both the corporation and the partnership were to be paid, was to be commenced with an initial deposit of $10,000, and a balance of not less than that sum was to be maintained. (Pls.' Ex. 8, R. 95, 157.) The bank was to receive a bond guaranteeing *the bank* up to $10,000. (Pls.' Ex. 8, R. 95, 158.)

The corporation commenced business in Indiana November 9, 1953. During the first year of operations, it appointed 120 agents there, and sold $1,140,000 of money orders. (R. 52, 64.) At the end of that period, there was only $38.10 in the corporate account. (R. 57, 61.)

There was approximately $4,000 in the joint operating account. (R. 62.)

There was $22,827.53 in the Special Account as of November 30, 1954, the day before the trial. (R. 62.) None of the appellants seemed to know the amount of their outstanding money orders which had not been paid. (R. 49, 73.)

Nor did they know what portion of the operating and special accounts belonged to the corporation and partnership respectively. (R. 66.)

The corporation has "siphoned" into the partnership $15,000 or $16,000 that has not been repaid. (R. 47, 65.)

From each of the stock subscriptions of the appellants to the corporation, $10,000, or a total of $30,000, has been diverted to the partnership. (R. 46.) There is no evidence that this has been repaid.

They have no other assets except some office equipment and stationery. (R. 66.)

Several bonds of appellants were received in evidence; but except for the $10,000 bond given to the bank to protect the latter against overdrawals (Pls.' Ex. 9, R. 95, 163), the

remaining two bonds were mere fidelity bonds to protect *appellants* against individual fraud and dishonesty. One was a thousand dollar bond executed by the agency in favor of the corporation and partnership (Pls.' Ex. 13, R. 95, 186-190), and the other was a $10,000 bond indemnifying them against loss resulting from dishonesty or fraud committed by any employee. (Pls.' Ex. 7, R. 95, 147-155.) They were not *performance* bonds for the *benefit of money order purchasers* as required by Sec. 5 of the Statute.

Appellant Derrick was a druggist in Wheaton, DuPage County, Illinois, who sold Bondified money orders there pursuant to an agency agreement dated August 11, 1953. (Pls.' Ex. 12, R. 95, 182.) He was their only agent in Illinois. (R. 68.) Under that date, he wrote a letter to the State Auditor informing the latter of his intention to sell Bondified money orders even though "I have been told that the Community Currency Exchange Act of the Illinois laws does not authorize my sale of these articles." (Pls.' Ex. 23, R. 95, 247.) He received no reply. (R. 88.) He sold his first Bondified money order October 19, 1953 (R. 91, Defs.' Ex. 4, R. 91, 96, 224) and has sold several hundred of them. (Pls.' Exs. 18, 13, R. 95, 230, 231, 224.) He is still engaged in that business. (R. 89.)

Context of Bondified Money Order.

The Bondified money order shows on its face the language "Bondified Money Order Service Operated Under License Granted To Bondified Systems, Inc., Chicago, Illinois." Where the partnership is the drawer, the "Inc." is omitted. Near the bottom center is an elliptical circle containing the words "Money Bondified Transfer". At the left of the circle is the word "Licensed", and at the right the word "Bonded". The stub, which is the customer's receipt, shows at the bottom the words "Pay your

bills here", above the names of Bondified Systems, Inc. and Chicago, Illinois, and Derrick Drugs Agency. (Defs.' Exs. 4, 4, 5, R. 96, 258; Pls.' Ex. 44, R. 96, 218.)

Appellants testified that "licensed" meant they were licensed by Checks, Inc., and not by any governmental agency (R. 60), and that "bonded" referred to the fidelity bonds and the bank bond aforementioned. (R. 62.) As to the words "Pay your bills here," Derrick testified that he had no arrangement to accept payment of utility or other bills, and that he actually never noticed those words before. (R. 90.) He admitted that the only license he had was from Bondified Systems. (R. 91.)

Appellants testified that although Bondified money order service operates in a number of other states (R. 71), they assumed no financial responsibility for them; that there is a unified advertising program for all franchise holders of the name "Bondified"; so that the public sees unified advertising of "Bondified" by proprietors of many independent organizations who are not responsible for each other's liabilities. (R. 74, 75.)

The American Express Company.

Appellees' evidence relative to the American Express Company is contained in the depositions taken in New York November 16, 1954, of Howard A. Smith, executive vice-president and a director of that company; John H. Baum and Frank J. Donohue, partners in Haskins and Sells, certified public accountants for the company; and Norman H. Page, senior vice-president, secretary, and also a director of the company. A large number of exhibits was introduced. The depositions and exhibits were received in evidence. (R. 96, 318-502.)

The present American Express Company originated November 28, 1868, as the result of a merger and consoli-

It submits to government surveillance, and furnishes the Treasury periodical reports of the expenses and revenue of its operations for the government. (R. 322.)

Its wholly owned subsidiary, American Express Company, Inc., is licensed by the New York State Banking Department. (R. 320.)

It has a network of 309 offices all over the world, of which 63 are in the United States. (R. 335.) It has a total of 61,900 correspondents, subagencies, and other outlets. (R. 335.) It has 7,766 employees. (R. 336.)

When the bank holiday was declared in 1933, the company had permission from the Treasury Department to stay open; it shipped currency all over the country in airplanes, and paid off all its obligations in cash. (R. 326, 327.)

The company started selling its money orders in 1882. (R. 325.)

The company has on the average about two and a quarter million dollars on deposit in 14 bank accounts in various communities in Illinois. (R. 327.)

The head office is located at 65 Broadway, New York, a 12-story building, which is only one of several buildings in that city where it houses its operations, and which belong to the company. Its main office has been there since before 1914. (R. 327.)

The company operates 3 offices in Chicago, with about 200 employees in them. Two of these offices have been there at least 25 years. (R. 336, 337.)

The Community Currency Exchanges

For the year ended December 31, 1950, the 577 licensed community currency exchanges issued $359,485,363.00 in money orders; for the year ended September 30, 1951, the

597 licensed community currency exchanges issued $402,799,476.00 in money orders; for the year ended September 30, 1952, the 597 licensed community currency exchanges issued $445,812,899.00 in money orders. (Defs.' Ex. 7, R. 96, 400.)

The assets of the community currency exchanges totalled as follows: As of December 31, 1950, $14,416,708.00; as of September 30, 1951, $14,772,542.00; as of September 30, 1952, $15,780,631.00. In excess of 80% of these sums constituted cash and liquid funds. (Defs.' Ex. 7, R. 96, 399.)

Pursuant to Sec. 5 of the Illinois Currency Exchange Statute, the community currency exchanges filed with the State Auditor for the benefit of their creditors corporate surety performance bonds aggregating $6,800,000.00 for the year ending December 31, 1952, covering 80.2% of their average money order liability as defined in the Statute, and corporate surety performance bonds aggregating $7,781,000.00 for the year ending December 31, 1953, covering 91.7% of their average money order liability. (Defs.' Ex. 7, R. 96, 401.)

No Showing Why Federal Court Was Required to Decide Constitutional Question.

No application for a temporary injunction was ever made by appellants in the Court below. It was not alleged, and it does not appear, that any proceeding was instituted in the State courts by appellees to restrain appellants, or to subject them to criminal penalties. It does not appear that appellees made any threat of enforcement against any unlawful conduct of appellees. There was no showing of irreparable injury, clear, great and imminent. There was no claim that appellants did not have a clear and adequate remedy in the State courts. There was no showing that the Supreme Court of Illinois has passed

upon the precise constitutional question raised here by parties who claimed they were not in the "usual" community currency exchange business. There was no showing that the State Supreme Court had ever decided the severability clause contained in Sec. 30 of the Statute in question in its application to the constitutional issue here. There was no showing why the defense of unclean hands could not appropriately be left for adjudication to the State courts, or why the Court below, assuming it was required to exercise its jurisdiction, should not pass upon that defense before it decided the constitutional issue. There was no showing of such exceptional circumstances as would command the Federal Courts to exercise equity jurisdiction to interfere with a State Statute which is of importance primarily to the people of Illinois, and which is expressive of a pronounced State public policy as above shown.

SUMMARY OF THE ARGUMENT.

The existence of a question as to the constitutionality of a state law is not itself ground for relief in the Federal Courts. Appellants had a clear and adequate remedy in the State courts. There was no showing of irreparable injury, clear, great or imminent. There was no threat directed by appellees against any particular conduct, and no steps were taken to enforce the Statute challenged. In view of *Currency Services, Inc.* v. *Matthew*, 90 F. Supp. 40 (W. D. Wisc.), relied upon by appellants in the District Court, and in their jurisdictional statement here, the precise constitutional question raised has never been passed upon by the Supreme Court of Illinois. The Federal courts cannot indulge in a speculative construction of how the Supreme Court of Illinois would view the law.

There are other reasons why appellants should be remitted to the State Courts. The defense of unclean hands

is a matter of local law. The question whether the severability clause contained in Sec. 30 of the Statute in question applies so as to remove the alleged discrimination, may be more appropriately left for adjudication to the State courts. The question whether appellants are in the same class with American Express Company and comparably situated, is one that first should be decided locally. Whether the Exemption is a valid "grandfather" clause, has never been passed upon by the Supreme Court of Illinois. Even if if were considered that the State Supreme Court has passed upon the constitutional issue involved here, it does not follow that it might not change its holding, in view of *Currency Services, Inc.* v. *Matthews*, 90 F. Supp. 40 (W. D. Wisc.).

This case may be decided on other grounds, and there is no necessity to decide the constitutional issue. The unclean hands defense has not been decided. That appellants have availed themselves of the benefits of the Statute and are foreclosed from attacking it, is an undecided issue. Whether appellants and American Express Company are in the same class, has not been passed upon.

Should the Court reach the constitutional question involved here, then the decisions of this Court leave no doubt of the validity of the Exemption. The Illinois legislature had the right to believe that the evil sought to be curbed, namely, the sale of money orders by financially irresponsible persons, did not exist in the case of the American Express Company as it did in the case of local operators who, like appellants here, often operated on a shoestring, and that the public interest would be no more advanced by bringing that company under the Statute than it would by bringing the Postoffice and banks and telegraph companies under it. The Constitution does not prohibit special laws inflexibly and always. The problem in the last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers.

ARGUMENT.

I.

THERE WERE MANY SUBSTANTIAL REASONS WHY THE DISTRICT COURT WAS JUSTIFIED IN DECLINING JURISDICTION.

It is needless to suggest that the existence of a question as to the constitutionality of a State law is not itself ground for relief in the Federal Courts. (*Watson v. Buck*, 313 U. S. 387, 401; *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89, 95, 96.)

Want of equity jurisdiction may, in the discretion of the court, be objected to on its own motion; and this Court has said that the Federal Court should especially do so where its powers are invoked to interfere, by injunction with threatened prosecution in a State courts. This Court has said that Congress has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the State courts the trial of criminal cases arising under the state laws, subject to review by this Court of any federal questions involved; that federal courts of equity should conform to this policy by refusing to interfere with threatened proceedings in the State courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and that equitable remedies infringing this independence of the states should be withheld if sought on slight or inconsequential grounds.

No person is immune from prosecution in good faith for his alleged criminal acts, and courts of equity do not ordinarily restrain criminal prosecutions. The imminence alone of prosecution, even though alleged to be in violation

of constitutional guaranties, is not a ground for federal equity relief, since the constitutionality of the statute on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. (*Douglas v. Jeannette*, 319 U. S. 157, 162, 163; *Beal v. Missouri Pacific R. Co.*, 312 U. S. 45, 49, 50.)

In *Beal v. Missouri Pacific Ry. Co.*, 312 U. S. 45, 49, 50, the Court said that

> "the federal courts are without jurisdiction to try alleged criminal violations of State Statutes. The State courts are the final arbiters of their meaning and appropriate application, subject only to review by this Court if such construction or application is appropriately challenged on constitutional grounds."

In *Railroad Com. v. Pullman Co.*, 312 U. S. 479, 500, the Court said:

> "The last word on the meaning of * * * the Texas Civil Statutes * * * belongs neither to us nor the district court but to the Supreme Court of Texas * * *.
>
> "The history of equity jurisdiction is the history of *regard for public consequences* in employing the extraordinary remedy of the injunction. * * * *Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance* of needless friction with State policies." (Italics ours.)

This Court has repeatedly said, because of the sensitiveness of the relationship between the federal and state courts, that federal courts should not decide questions of constitutionality on the basis of preliminary guesses regarding local law; and that any speculative construction of how the State Supreme Court would view the law, was at best a forecast rather than a determination; and that this Court was without jurisdiction, or would commit an abuse of discretion, to make a pronouncement on the constitutionality of a State Statute, *which the State Courts would not be bound to follow*, when the court is left in uncertainty

as to the meaning of the statute when applied to any particular state of facts. (*Federation of Labor* v. *McAdory*, 325 U. S. 450, 474; *C. I. O.* v. *McAdory*, 325 U. S. 472, 477; *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101, 104, 105.)

1. Where plaintiffs have a clear and adequate remedy in the State courts, as they do here, the Federal courts will not entertain equity jurisdiction to pass upon the constitutionality of State legislation. (*Burford* v. *Sun Oil Co.*, 319 U. S. 315, 332, 333, footnote 29; *Alabama Com.* v. *Southern Ry. Co.*, 341 U. S. 341, 349, 350.)

2. Before the Federal courts will entertain jurisdiction, it must appear that the danger of irreparable loss is both great and imminent.

In *Watson* v. *Buck*, 313 U. S. 387, 400, the Court said:

> "A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. * * * For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately in such numbers, and in such a manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainant would sustain if those threats were carried out, are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified. * * * It is clearly apparent that there was a failure to give proper weight to what is in our eyes an essential prerequisite to the exercise of this equitable power."

In *Beal* v. *Missouri Pacific R. Co.*, 312 U. S. 45, 50, the contemplated filing of a single suit in the State court was held not to constitute a threat of irreparable injury.

There was no showing here even of a threat of a single suit. Appellees admitted in their answer their threat to

enforce the Statute *in the event* appellants violated the same, but that it was not directed against any particular conduct; that at the time thereof, appellants either had not violated the Statute, or appellees were not apprised of any violation; that appellees were not apprised of any violations until the amended complaint, filed May 5, 1954, informed them of the same; that appellees have taken no steps against appellants to enforce the Statute. (R. 29.)

Appellants' evidence tended to show that Carlson, one of appellants, and Mr. MacKenzie, one of their counsel, went to the State Auditor's office in early June, 1953, and that Mr. Jack Smith there (whose position does not appear) advised them of the law, and that the office would stand back of the law. (R. 41.) Inasmuch as appellants did not sell their first money order in Illinois until October 19, 1953 (R. 91, Defs.' Ex. 4, R. 91, 96, 224), it is clear that the only evidence adduced by appellants on this point established appellees' allegations, and the entire absence of irreparable injury, clear, great and imminent.

3. Appellants now assert that the Statute is clear, and that *McDougall* v. *Linder*, 389 Ill. 141, is a clear decision, that the exemption of American Express Company is valid, so that there was no need for recourse to that court by appellants.

In this connection, it will be noted that their brief nowhere refers to *Currency Services, Inc.* v. *Matthew*, 90 F. Supp. 40 (W. D. Wisc.), where a three judge court, in an opinion by Circuit Judge Lindley, held that the Wisconsin Currency Exchange Statute violated the equal protection clause in an attack by parties engaged in the money order business there. This significant omission from their brief denotes a major shifting of their position heretofore taken both in the District Court and this Court; and the elementary rule that such a change is not permissible, ought to be applied here, particularly in view of the fact that

their staunch reliance upon the Wisconsin decision constituted one of the reasons for the District Court's majority opinion here.

In the Court below, appellants' counsel stated that they were "relying very largely" on the Wisconsin decision (R. 100) and again said they were "making every effort I can to bring our case exactly in line with that, and I think we have done so". (R. 105.) In their jurisdictional statement filed here, they twice expressed their reliance upon that decision. (pp. 7, 8.)

Circuit Judge Schnackenberg, in his opinion in the case at bar, said that no question was raised as to the federal court's jurisdiction in the Wisconsin case; and with reference to appellants' contention that *McDougall* v. *Ingalls*, 389 Ill. 141, was so clear that no further state court decision was necessary, he said:

> "In so urging, plaintiffs overlook the plain distinction between the business of the plaintiffs in the McDougall case and the business in which they (plaintiff herein) intend to engage. That distinction plaintiffs themselves have *made* and *emphasized*." (Appellants' Jurisdictional Statement, p. 31a.) (Italics ours.)

In the Wisconsin decision, Judge Lindley said that inasmuch as the plaintiffs there were engaged solely in the business of selling money orders, they were in a position to attack the alleged discrimination in the Wisconsin Statute, and that *Wiedenweiler* v. *Brandau*, 297 Ill. 228, rather than the *McDougall* case, controlled; that if the plaintiffs there were engaged in the "usual" community currency exchange business, then the result would be different, the *McDougall* case would control, and the statute as to them would not be discriminatory; and ordered the issuance of a permanent injunction until such time as plaintiffs went into the "usual" community currency exchange business.

If, therefore, appellants rely so strongly upon Judge

Ludley's decision as they heretofore proclaimed to do, then it should be a matter for the Illinois Supreme Court to decide whether as applied to them, the *Wedeseweiler* decision or the *McDougall* decision should control. Under such circumstances, it would not be in accord with the expressed policy of this Court to indulge in a speculative construction of how the Supreme Court of Illinois would view the law.

In *232 East Chestnut St. Corp.* v. *Berger*, 3 Ill. (2d) 32, 34, the State Supreme Court only recently again held that where a determination of the issues requires the application of a provision of the Federal Constitution to facts different from those involved in cases where its effect has previously been considered, the case sufficiently involves a construction of the constitution to warrant a direct appeal to that Court.

But even assuming that the McDougall case clearly holds that the Statute does not violate the equal protection clause, even as applied to the money order business, it would not follow that the State Supreme Court has so exhausted its function in the federal-state relationship as to require the Federal Courts to entertain jurisdiction in the case at bar.

The following are additional reasons why appellants should be remitted to the State Courts:

(a) The question whether appellants have come into equity with unclean hands, which appellees interposed as a defense in their answer to the amended complaint, is a matter of local law. (*Ford* v. *Caspers*, 128 F. (2d) 884, 885, C. A. 7.) Appellants' misconduct affects the people of Illinois, as we shall show under Point II *infra*.

(b) The question whether the severability clause contained in Sec. 30 of the Statute in question would be so applied as to remove the alleged discrimination is a ques-

tion which may be more appropriately left for adjudication to the Illinois Supreme Court. (*Liggett v. Lee*, 288 U. S. 517, 541; *Dorchy v. Kansas*, 264 U. S. 286, 290, 291.) True enough, the Court in *McDonald v. Lauder*, 389 Ill. 141, 151, said with reference to the American Express Company and the other exempted companies that "the General Assembly would surely never have passed the act if they had thought the said companies would be made subject to its rules and regulations;" but it was mere *obiter dictum* because the Court decided that the Statute was not discriminatory and therefore had no occasion to determine whether the exemption was severable. That occasion would have arisen only if the Court had held the exemption unconstitutional. The quoted words were, therefore, unnecessary to the decision, and in our view were merely intended to emphasize the substantial differences between the community currency exchanges and exempted companies. There was certainly nothing in the record in that case that would afford a factual basis for the Court's observation. In any event, the quoted language requires clarification, and the Illinois Supreme Court is the proper tribunal for that.

(c) The question whether appellants are actually and factually in the same class as American Express Company, and are comparably situated, is one that should first be passed upon by the State Supreme Court. The Wisconsin decision, *Currency Services, Inc. v. Matthew*, 30 F. Supp. 40, 43, 44, held that the important thing was that American Express Company conducted its money order business in "substantially the same *manner*" as plaintiffs there proposed to do, and that "its Wisconsin operations are not at all different from those contemplated by plaintiff corporation". Findings 6, 7, and 8, made by the District Court in the case at bar, seem to point up that similarity. Nothing was said in the Wisconsin decision, or even in the findings in the case at bar, relative to plaintiffs' age,

size, history, experience and financial responsibility. Those considerations seemed to have been lost sight of, although the principal purpose of the Statute was to secure the protection of the public against loss from worthless money orders issued by financially irresponsible sellers. What protection the *manner* of doing business would be to the public, was not mentioned. Such matters should more appropriately be left to the State Supreme Court.

But even if the *manner* of conducting the business should properly be considered, the principal test for determining whether appellants and American Express Company are comparably situated, the evidence shows that their manner of doing business was not the same because appellants were selling money orders with the false and fraudulent representations imprinted thereon that they were "licensed" and "bonded", and were accepting payment of bills, in simulation of the community currency exchanges. There is no evidence that the American Express Company was engaged in that practice. Certainly the State Supreme Court ought to be required to pass upon that situation first.

(d) The evidence shows that appellants commenced their business in 1953. American Express Company was organized in 1868, started the sale of money orders in 1882, and was operating in Illinois long before the passage of the Statute. The exemption may certainly be considered as a "grandfather" clause; and *as such* its validity, having never been decided by the State Supreme Court, should be presented to that Court first.

(e) And finally, the appellants' assertion that the State Supreme Court has already passed upon the question presented here, does not mean that the question should not be presented to it again. It does not necessarily follow that if the matter were presented by plaintiffs here, es-

pecially in the light of the Wisconsin opinion, to the Illinois Supreme Court again, it might not change its holding.

That very position was taken in *Achtieg* v. *Board*, 117 F. (2d) 989, 995, C. A. 7, concurred in by Judge Lindley. It was there argued that it would be futile to apply to the Indiana Supreme Court for a writ of habeas corpus in view of its previous clear pronouncements adverse to petitioner's contention in the Federal Court. The Court of Appeals held that it did not necessarily follow that the State Supreme Court would not change its holding; that even if that Court refused to change its views, petitioner would be in a position to apply directly to the Federal Supreme Court for redress; and that "this course seems to us to be in the orderly procedure and must be followed, rather than to provoke a controversy between the State court and the Federal court * * * and thus possibly create an intolerable condition * * *."

A "state-wide doom by a federal court of a state's legislative policy" without first permitting the State Supreme Court to pass upon it, would hardly comport with that restraint which this Court has frequently exhorted the lower Federal courts to exercise in cases of this kind. (*Alabama Com.* v. *Southern Ry. Co.*, 341 U. S. 341, 349; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U. S. 293, 297-298; *Toucey* v. *N. Y. Life Ins. Co.*, 314 U. S. 118, 129, 141; *Phillips* v. *U. S.*, 312 U. S. 246, 250, 251; *Burford* v. *Sun Oil Co.*, 319 U. S. 315, 332.)

II.

THERE IS NO NECESSITY TO DECIDE THE CONSTITUTIONAL ISSUE.

Should the Court decide that the District Court was not justified in declining jurisdiction, we then approach the question whether there is an unavoidable necessity to decide the constitutional issue here.

Only a few weeks ago, the Court in *Neese v. Southern R. Co.*, 350 U. S. 77, 78, in a *per curiam* opinion, said that it is the traditional practice of the Court to refuse to decide constitutional questions when the record discloses other grounds of decision, whether or not such other grounds have been properly raised before the Court by the parties.

In *Rescue Army v. Municipal Court*, 331 U. S. 549, 568-575, the Court said that it has always followed a policy of strict necessity in disposing of constitutional issues; that "every application has been an instance of reluctance, indeed of refusal, to undertake the most important and the most delicate of the Court's functions, notwithstanding conceded jurisdiction, until necessity compels it in the performance of constitutional duty"; and that the policy is one of substance, basic to the federal system, and this Court's appropriate place within that structure.

There are three issues present here which must be decided before the constitutional question is reached: (a) The defense of unclean hands, which is pleaded in the appellees' answer, but which a court may raise *sua sponte*; (b) whether appellants, who have availed themselves of some of the benefits of the State Statute in controversy, are not foreclosed from attacking it; and (c) whether appellants and American Express Company are in the same class.

(a). The facts relevant to the defense of unclean hands have already been adverted to, *supra*. Briefly, they show that when the appellants could not secure for Currency Services of Illinois, Inc., a Minnesota corporation, authority to do business in Illinois, they changed the name to Bondified Systems, Inc., and amended the charter to preclude them from operating under the Statute in question. When they found it illegal to carry on their operations in Illinois under that style, they formed a partnership under a similar name, combined both entities into one, intermingled their assets so that they could not tell them apart, and operated both in Indiana and Illinois. Thus they deliberately evaded the laws of Illinois. Their written agreement enabled them to change their disguises anytime they saw fit.

Their corporate stock subscriptions were diverted to the partnership, and substantial sums were siphoned from the corporation to the partnership, so that while the corporation sold over a million dollars of money orders in Indiana, it had only $38.10 in the bank.

The partnership owed the corporation at least $55,000.00, so that their assets were considerably less than their known liabilities, and there was no evidence as to how many unpaid money orders were outstanding. By their agreement, the partners could terminate their business anytime by transferring it to the corporation and receiving stock.

They were practicing a fraud upon the public because of their false representations that they were "licensed" and "bonded", and because of their simulation of currency exchange operations. That wording was reasonably and well calculated to deceive and defraud the people of Illinois into the belief that the issuer was licensed and bonded in accordance with the Statute in question. Had appellants intended to ascribe the meaning to that language

rency exchange without first securing a license to do so from the Auditor.

Any person, firm, association, partnership or corporation issued a license to do so by the Auditor shall have authority to operate a community currency exchange or an ambulatory currency exchange, as defined in Section 1 hereof.

No license shall be issued for the conduct of an ambulatory currency exchange on any public street or highway. An ambulatory currency exchange shall be required to and shall secure a license or licenses for the conduct of its business at each and every location served by it, as provided in Section 4 hereof. No license issued for the conduct of its business at one location shall authorize the conduct of its business at any other location.

Any person, firm, association, partnership or corporation that violates this section shall be fined not less than $500.00 nor more than $1000.00 or imprisoned in the county jail for not more than one year, or both, and the Attorney General or the State's Attorney of the county in which the violation occurs shall file a complaint in the Circuit Court of the county to restrain the violation.

Sec. 3. No community or ambulatory currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community or ambulatory currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof, and deliver such money or proceeds of evidence of money upon request and direction of such owner or owners: provided, that nothing contained herein shall prevent a community or an ambulatory currency exchange from obtaining state automobile and city vehicle licenses for a fee or service

which they testified to, they would have had no difficulty in finding more apt language in that regard.

In *Metropolitan Theatre Co.* v. *Chicago*, 246 Ill. 20, 23, the Court defined "license" as a privilege granted by a government.

In buying money orders in Illinois, the public would be vitally interested in knowing that they are buying them from currency exchanges licensed and bonded under the Statute, and operating under State supervision; but it could not possibly interest them to know that the issuer was licensed by Checks, Inc., and had given a small bond to a bank, and had received 2 small fidelity bonds, none of which were performance bonds, and none of which protected buyers against siphoning and juggling operations.

Moreover, the indiscriminate use of the trademark and name "Bonidified" by owners of independent organizations located in various states who are not responsible for each other's liabilities and acts, the trademark and name being impressed upon the public through a course of unified advertising, is a continuing misrepresentation to the public of the ownership of the business and the financial responsibility thereof. (*Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488, 494; *Manhattan Medicine Co.* v. *Wood*, 108 U. S. 218). Such misrepresentation will suffice to deny relief in equity.

Unclean hands need not be of such a nature as to be punishable as a crime, or to justify legal proceedings. Any wilful act which can be said to transgress equitable standards of conduct is sufficient. The doctrine assumes wider and more significant proportions where a suit in equity concerns the public interest, for then it averts injury to the public. (*Precision Co.* v. *Automotive Co.*, 324 U. S. 806, 814, 815).

(b) Appellants, by simulating the currency exchange

business, and practicing a fraud upon the public, as aforementioned, have no standing to assert that the Statute under which the effort to cheat or mislead is made, is without constitutional sanction. A court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. (*Kay* v. *U. S.*, 303 U. S. 1, 6; *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 569; *Ashwander* v. *Valley Authority*, 297 U. S. 288, 348 and authorities cited there.)

(c) The question of class must be determined; because unless appellants are comparably situated with American Express Company and in the same class, they cannot claim they have been treated differently. (*National Union of Marine Cooks* v. *Arnold*, 348 U. S. 37, 41.)

These issues were not decided by the court below.

III.

SHOULD THE COURT FIND THAT ITS DECISION ON THE CONSTITUTIONAL ISSUE IS PROPER AND NECESSARY, THEN THE DECISIONS OF THIS COURT LEAVE NO DOUBT OF THE VALIDITY OF THE EXEMPTION IN QUESTION.

It should be noted at the outset that the amended complaint does not attack the exemption of United States Post Office, Western Union, and Postal Telegraph money orders, but only that of the American Express Company. (R. 16-18.) Even *Currency Services, Inc.* v. *Matthew*, 90 F. Supp. 49, 43 conceded that the exemption as to the postal department and the telegraph companies was proper inasmuch as they were already appropriately regulated by national legislation. (See likewise *Federation of Labor* v. *McAdory*, 325 U. S. 450, 472.)

Does the exemption of American Express Company money orders offend the equal protection clause?

charge, or from rendering a photostat service, or from rendering a notary service either by the proprietor of the currency exchange or any one of its employees, authorized by the State of Illinois to act as a notary public, or from selling travelers cheques obtained by the currency exchange from a banking institution under a trust receipt, or from issuing money orders or from accepting for payment local utility bills; provided, further, that in accepting any such payment the community or ambulatory currency exchange shall not be deemed to act as agent for the local utility, nor shall such community or ambulatory currency exchange be authorized to receipt for such payment in the name, or on behalf, of such utility.

Sec. 3.1. Nothing in this Act shall prevent a currency exchange from rendering State or Federal income tax service; nor shall the rendering of such service be considered a violation of this Act if such service be rendered either by the proprietor or any of his employees.

Sec. 4. Application for such license shall be in writing under oath and in the form prescribed and furnished by the Auditor. Each application shall contain the following:

(a) The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof, and the name and business address if the applicant is a corporation;

(b) The county and municipality, with street and number, if any, where the community currency exchange is to be conducted, if the application is for a community currency exchange license;

(c) If the application is for an ambulatory currency exchange license, the names and addresses of the plants or businesses at the location or locations to be served by it; and

(d) The applicant's occupation or profession; a detailed statement of his business experience for the ten years immediately preceding his application; a detailed statement of his finances; his present or previous connection with any other currency exchange; whether he has ever been involved in any civil or criminal litigation, and the material facts pertaining thereto; whether he has ever been committed to any penal institution or admitted to an institution for the care and treatment of mentally ill persons; and the nature of applicant's occupancy of the premises to be licensed where the application is for a community currency exchange license. If the applicant is a partnership, the information specified herein shall be required of each partner. If the applicant is a corporation, the said information shall be required of each officer and director thereof.

Such application shall be accompanied by a fee of $25.00 which fee shall be for the cost of investigating the applicant. When the application for a community currency exchange license has been approved by the Auditor and the applicant so advised, an additional sum of $50.00 as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Auditor by the applicant; provided, that the license fee for an applicant applying for such a license after July 1st of any year, shall be $25.00 for the balance of such year.

When the application for an ambulatory currency exchange license has been approved by the Auditor; and such applicant so advised, such applicant shall pay an annual license fee of $10.00 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such a license after July 1st of any year shall be $5.00 for the balance of such year for each and every location to be served by such applicant. An approved applicant shall not be required to pay the initial investigation fee of $25.00 more than once. Such an

The constitution does not require situations which are different in fact or opinion to be treated in law as though they were the same. (*Goesaert* v. *Cleary*, 325 U. S. 464, 466.) The court is bound to assume the existence of any state of facts which will sustain the Statute. (*State Federation of Labor* v. *McAdory*, 325 U. S. 440, 465.) There is no doctrinaire requirement that legislation should be couched in all-embracing terms. (*Davidson* v. *New Orleans*, 96 U. S. 97, 106; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400.)

The legislature is free to recognize degrees of harm and it may confine its restrictions to those classes where the need is deemed to be the clearest. (*West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400.) The State may do what it can do prevent what is deemed an evil, and stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rules laid down were made mathematically exact. (*Dominion Hotel Co.* v. *Arizona*, 249 U. S. 265, 268.)

It is no requirement of equal protection that all evils of the same genus be eradicated or none at all. It is by practical considerations based on experience rather than by theoretical inconsistencies that the question of equal protection is to be answered. (*Railway Express* v. *N. Y.*, 336 U. S. 106, 110.)

The Fourteenth Amendment is not a pedagogical requirement of the impractical. The equal protection clause does not mean that all occupations that are called by the same name, must be treated in the same way. The power of the State may be determined by degrees of evil, or exercised in cases where the detriment is specially experienced. (*Dominion Hotel* v. *Arizona*, 249 U. S. 265, 268.)

If a class is deemed to present a conspicuous example

approved applicant, when applying for a license with respect to a particular location, shall file with the Auditor, at the time of filing an application, a letter or memorandum, which shall be in writing and under oath, signed by the owner or authorized representative of the place of business where service is to be rendered; such letter or memorandum shall contain a statement that such service is desired, and that the person signing the same is authorized so to do.

Sec. 4.1. Upon receipt of an application for a license for a community currency exchange, the Auditor shall investigate the need of the community for the establishment of a community currency exchange at the location specified in the application.

"Community", as used in this Act, means a locality where there may or can be available to the people thereof the services of a community currency exchange, reasonably accessible to them. If the issuance of a license to engage in the community currency exchange business at the location specified, will not promote the convenience and advantage of the community in which the business of the applicant is proposed to be conducted, then the application shall be denied.

Sec. 4.2. Whensoever the ownership of any currency exchange, heretofore licensed under the provisions of this Act, shall be held or contained in any estate subject to the control and supervision of any Administrator, Executor, Guardian or Conservator appointed, approved or qualified by any Court of the State of Illinois having jurisdiction so to do, such Administrator, Executor, Guardian or Conservator, may, upon the entry of an order by such Court granting leave to continue the operation of such currency exchange, apply to the Auditor of Public Accounts for a license under the provisions of this Act. When any such Administrator, Executor, Guardian, or Conservator shall apply for a currency exchange license pursuant to the pro-

of what the legislature seeks to prevent, the 14th Amendment allows it to be dealt with, although otherwise and merely logically not distinguishable from others not embraced in the law. (*Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 557.)

Absolute symmetry is not required. (*Patsone* v. *Pa.*, 232 U. S. 138, 144.) The rule of equality permits many practical inequalities. (*New York, etc. Corp.* v. *New York*, 303 U. S. 573, 578.)

In *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 488, 489, this court had occasion to pass upon the constitutionality of an Oklahoma Statute dealing with the regulation of visual care. Among other things, the legislation permitted the sale of ready-to-wear glasses by retail merchandise stores, but prohibited such stores from subleasing space to, or permitting any person purported to do eye examinations, to occupy space in them. The court in upholding the constitutionality of the Act, made some important observations which we quote:

> "But the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.
>
> "The day is gone when this court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.
>
> . . .
>
> "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. . . . Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative

> mind. The legislature may select one phase of one field, and apply a remedy there, neglecting the others. * * * The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. * * * For all this record shows, the ready-to-wear branch of this business may not loom large in Oklahoma, or may present problems of regulation distinct from the other branch".

In the case at bar, the financial responsibility of American Express Company has stood the test of time. It has outlived many depressions. It has never defaulted in the payment of its obligations. (R. 363.) It is a worldwide institution of vast ramifications and proportions, and there is no other like it. It is subject to government surveillance.

Certainly the legislature of Illinois had the right to believe that the evil sought to be curbed, namely, the sale of money orders by financially irresponsible persons, did not exist in the case of that great enterprise as it did in the case of the local operators, who, like appellants here, often operated on a shoestring; and that the public interest would be no more advanced by bringing it under the Statute than it would by bringing banks and telegraph companies under it.

In *Engle* v. *O'Malley*, 219 U. S. 128, a New York statute prohibited persons to engage in the business of receiving money deposits for safekeeping or transmission, or any other purpose, without a license from the comptroller. The license requirements were that the applicant deposit $10,000 with the comptroller, and file a bond of from $10,000 to $50,000. The annual license fee was $50. Sec. 29 d. of the statute exempted any express or telegraph company receiving money for transmission, and any persons where the average amount of each sum received on deposit or for transmisison shall have been not less than $500 during the preceding year.

In holding the exemption valid, the court in an opinion by Mr. Justice Holmes said, pp. 137, 138:

> "Legislation which regulates business may well make distinctions depending upon the degrees of evil. It is true, no doubt, that where size is not an index to an admitted evil, the law cannot discriminate between the great and the small. But in this case, size is an index."

Appellants urged with great emphasis in the District Court that the specific exemption of American Express Company, rather than of a class, vitiated the exemption, but they cited no decision of this court to support that view.

This court has held that individual exemptions, where a reasonable basis therefor existed, are not violative of the Equal Protection Clause.

A case in point is *Williams* v. *Baltimore*, 289 U. S. 36. There Maryland passed a statute exempting the Washington, Baltimore and Annapolis Electric Railroad Company from the payment of all taxes for 2 years. The company was then in the hands of a Federal Court receiver. The road supplied the only rail service to the state capital, and the legislature found it to be in the public interest to keep the service going. Annapolis and Baltimore filed with the receiver clauses for taxes and challenged the Act as discriminatory.

The District Court upheld the exemption, but the Court of Appeals, C. A. 4, reversed (61 F. (2d) 374). Judge Parker said that it was not an attempt at classification, but an arbitrary individual exemption.

This court, in a unanimous opinion delivered by Mr. Justice Cardozo, reversed the Court of Appeals, and said, p. 42:

> "The public policy that made it wise in the judg-

In the event a receiver is appointed in accordance with Section 15.1 of this Act, and the Auditor determines that the business of the currency exchange should be liquidated, and if it shall appear that the said minimum sum was not on hand or available at the time of the appointment of the receiver, then the receiver shall have the right to recover in any court of competent jurisdiction from the owner or owners of such currency exchange, or from the stockholders and directors thereof if such currency exchange was operated by a corporation, said sum or that part thereof ~~which~~ was not on hand or available at the time of the appointment of such receiver. Nothing contained in this section shall limit or impair the liability of any bonding or insurance company on any bond or insurance policy relating to such community currency exchange issued pursuant to the requirements of this Act, nor shall anything contained herein limit or impair such other rights or remedies as the receiver may otherwise have at law or in equity.

Sec. 8. A community or an ambulatory currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community or an ambulatory currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises; provided, further, that no community currency exchange hereafter licensed for the first time shall share any room with any other business, trade or profession nor shall it occupy any room from which there is direct access to a room occupied by any other business, trade or profession.

Sec. 9. No community or ambulatory currency ex-

ment of the legislature to help this particular railroad and keep its business going, may have failed altogether in respect of any other railroad, solvent or insolvent.".

And at p. 46:

"The constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which existing general laws are incompetent to cope. * * * The problem in the last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in cases of plain abuse will there be revision by the courts."

Should it be contended that the exemption in the case at bar is not a two year exemption, our answer is that the distinction is irrelevant. No exemption, not even that in this case, is irrevocable. Should the legislature find that conditions have changed so that the exemption is no longer justified, it could revoke it; and likewise the courts could invalidate the exemption if the facts upholding it have changed. (*Chastleton Corp. v. Sinclair*, 264 U. S. 543, 547, 548.)

Nor is it tenable to indulge in speculation or doubt as to the "future financial responsibility" of American Express Company, as did the Wisconsin decision, 90 F. Supp. 40, 43, 44. This court in *Queenside Hills Co. v. Saxl*, 328 U. S. 80, 84, held that such speculation was not permissible, and said:

"The legislature is entitled to hit the evil that exists. * * * It need not take account of new and hypothetical inequalities that may come into existence as time passes or as conditions change."

Cases where the court upheld individual exemptions in State legislation, without limitation of time are: *Erb v. Morasch*, 177 U. S. 584; *Toyota v. Hawaii*, 226 U. S. 184; *New York v. Zimmerman*, 278 U. S. 63; *Salsburg v. State*

et Maryland, 346 U. S. 345; and see Mr. Justice Holmes' opinion in *Interstate Consol. Street Ry. Co.* v. *Mass.*, 207 U. S. 79, 85.

Appellants also contended in the District Court that it was difficult or impossible to sue or serve American Express Company in the State or Federal Courts. They are mistaken. Prior to the revised Civil Practice Act that went into effect in Illinois January 1, 1956, American Express Company could be sued and served as a *de facto* corporation in the Illinois Courts (*Dugan* v. *Int. Assn.*, 202 Ill. App. 508, 509; *Suraino* v. *Driaugsto*, 252 Ill. App. 427, 429; and numerous cases cited there; *Fitzpatrick* v. *Butler*, 160 Ill. 282, 286).

Since January 1, 1956, Secs. 13.4 and 27.1 of the revised Illinois Civil Practice Act expressly provide for service and suit against a partnership in its firm name. (Vol. 2—Ill. Rev. Stat. 1955, Chap. 110, par. 13.4 and 27.1.)

So far as the Federal Courts are concerned, Federal Rules of Civil Procedure 4 (d) (3) and 4 (d) (7) apply. (*Wilson & Co.* v. *W. P. W. of A.*, 83 F. Supp. 162, 166, 167, S. D. N. Y.; *Busby* v. *Electric Union*, 147 F. (2d) 865, 867 (App. D. C.); *Operatives Plasterers Assn.* v. *Case*, 93 F. (2d) 56, 65-68, App. D. C.)

Although appellants have not referred to the Wisconsin decision in their brief, we should like to comment further on that decision, from which no appeal was taken.

All the historical background that led to the enactment of the Currency Exchange legislation, existed in Illinois, and not in Wisconsin. The Wisconsin legislature merely copied the 1943 Illinois Statute. In that setting, the Wisconsin Federal Court decided the *Currency Services* case; and although it improperly exerted jurisdiction, it construed the Statute.

The numerous amendments to the Illinois Statute since

its passage are listed in the State Auditor's Report (Defs.' Ex. 7, R. 96, 289, 305-309); but they were not enacted in Wisconsin.

Where different interpretations are given in different states to a similar local statute, or even to a uniform state statute, that law in effect becomes a different law in one State from what it is in the other. (*Chicago Union Bank* v. *Kans. City Bank*, 136 U. S. 223, 235; *Maring Bank* v. *Kalt-Zimmers Co.*, 293 U. S. 357, 366.)

The only thing that seemed to count in the Wisconsin decision was that American Express Company conducted its money order business in substantially the same manner as plaintiffs there, and that because they were in direct competition with each other the *Wedesweiler* case, 297 Ill. 237, 238, rather than the *McDougal* case, 389 Ill. 141, 150, applied. It is difficult to understand why American Express Company was not also in direct competition with the handful of currency exchanges there.

This Court in *Union Bank & Trust Co.* v. *Phelps*, 288 U. S. 181, 186, expressly held that mere competition was not enough to show that two concerns must be burdened alike by State legislation taxing the shares of one of them and not the other.

The mere *manner* of doing business was wholly irrelevant to the achievement of the Statute's objectives. It was the protection of the public against loss from worthless money orders that was sought; and that object the Wisconsin decision did not even advert to, nor did it even mention the plaintiffs' financial responsibility.

Even the *Wedesweiler* case, which had nothing to do with the Currency Exchange Statute, as well as the *McDougall* case, agreed that if the exemption had reference to financial responsibility, or any other thing having any relation to the protection of the public, it would not constitute an arbitrary classification.

dress at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. If issued for an ambulatory currency exchange, it shall so state, and shall state the name and office address of the licensee, and the name and address of the location or locations to be served by the licensee, and shall not be transferable and assignable.

Sec. 12. If the Auditor shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the Auditor shall be filed by the licensee within thirty (30) days after written demand therefor upon the licensee by the Auditor.

Sec. 13. No more than one place of business shall be maintained under the same license, but the Auditor may issue more than one license to the same licensee upon compliance with the provisions of this Act governing an original issuance of a license, for each new license.

Whenever a licensee shall wish to change the name or place of business as originally set forth in his license, he shall give written notice thereof to the Auditor, and if the change is approved by the Auditor he shall attach to the license, in writing, a rider stating the new name or the new address or location of the community currency exchange.

Every application for a change of location of a community currency exchange shall be treated by the Auditor with respect to the approval or disapproval of the proposed location, in the same manner as is otherwise provided in this Act for the treatment of proposed locations as contained in original applications for community currency exchange licenses; and if any fact or condition then exists with respect to the application for change of location, which fact or condition would otherwise authorize denial of an original application for a community currency exchange

The Community Currency Exchanges in Illinois do not seem to have found the statutory charges too burdensome, nor do they seem too concerned over any monopoly of the money order business by American Express Company. If appellants consider the charges too burdensome (a point which is immaterial, *Gant v. Oklahoma City*, 289 U. S. 98, 103; *Standard Oil Co. v. Marysville*, 279 U. S. 582, 586; *Erie R. Co. v. Williams*, 233 U. S. 685, 700), the difficulty, if any, will be due to their own failure to enjoy the benefits conferred by the Statute as freely as they may, by limiting their business to the performance of only one of the services authorized by the Statute.

> "One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may." (*Aero-Mayflower Transit Co. v. Georgia*, 295 U. S. 285, 289.)

The Wisconsin decision indicates that the *McDougall* case placed "undue emphasis on the use of the word community" (p. 44); but in the light of the later Illinois decisions and amendments, that observation, it seems to us, cannot be maintained.

In view of the decisions of this Court cited *supra*, none of which were alluded to in the Wisconsin decision, and of the later Illinois decisions and amendments, we cannot avoid the conclusion that the Wisconsin decision, rendered in an inexperienced environment with a public policy less pronounced than that of Illinois, which fathered the Statute, should not be considered applicable to the case at bar.

From the foregoing authorities, it would seem evident that the contention that a State Statute contravenes the equal protection clause, has met with little favor at the hands of this Court.

Mr. Justice Holmes called the Equal Protection Clause the "usual last refuge of constitutional arguments."

(*Buck* v. *Bell*, 274 U. S. 200, 208.) In *Railway Express* v. *N. Y.*, 336 U. S. 106, Mr. Justice Jackson said: "While claims of denial of equal protection are frequently asserted, they are rarely sustained." And in the Constitution of the United States of America, Analysis and Interpretation, prepared by the Legislative Reference Bureau, Library of Congress, 1953 it is stated, p. 1153:

> "When State action is attacked under the due process clause, the assailant usually charges also that he is denied the equal protection of the laws. Except where discrimination on the basis of race or nationality is shown, few police regulations have been found unconstitutional on that ground."

CONCLUSION.

For the reasons stated, it is respectfully submitted (a) that the decree appealed from should be affirmed; (b) that if it should be decided that the District Court had or should have exercised jurisdition, then the cause should be remanded with directions to pass upon the other issues presented; and (c) that if it should be held that the constitutional question is ready for decision, then the Court may by its judgment declare that the exemption of the American Express Company is not violative of the Equal Protection Clause, or if it is, that the exemption is severable in accordance with Sec. 30 of the Statute in question.

Respectfully submitted.

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license because of the proposed location, then such application for change of location shall not be approved.

Sec. 13.1. Whenever two or more licensees shall desire to consolidate their places of business, they shall make application for such consolidation to the Auditor upon a form provided by him. This application shall state: (a) the name to be adopted and the location at which the business shall be located, which name and location shall be the same as one of the consolidating licensees; (b) that the owners, or all partners, or all stockholders, as the case may be, of the licensees involved in the contemplated consolidation, have approved the application; (c) a certification by the secretary, if any of the licensees be corporations, that the contemplated consolidation has been approved by all of the stockholders at a properly convened stockholders meeting; (d) other relevant information the Auditor may require. Simultaneously with the approval of the application by the Auditor, the licensee or licensees who will cease doing business shall: (a) surrender their license or licenses to the Auditor; (b) transfer all of their assets and liabilities to the licensee continuing to operate by virtue of the application; (c) apply to the Secretary of State, if they be corporations, for surrender of their corporate charter in accordance with the provisions of "The Business Corporation Act", filed July 13, 1933, as amended.

An application for consolidation shall be approved or rejected by the Auditor within 30 days after receipt by him of such application and supporting documents required thereunder.

Such consolidation shall not affect suits pending in which the surrendering licensees are parties; nor shall such consolidation affect causes of action nor the rights of persons in particular; nor shall suits brought against such licensees in their former names be abated for that cause.

Nothing contained herein shall limit or prohibit any ac-

APPENDIX I.

Currency Exchange Law.

"An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof." (Approved June 30, 1943, in force October 1, 1943; as amended.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 01. The General Assembly has found and declares: that the community currency exchange business, as hereinafter defined in Section 1, has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which

has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage;

that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act.

Section 1. For the purposes of this Act: "Community currency exchange" means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name or any other money orders (other than United States Post Office money orders, American Express

Company money orders, Postal Telegraph Company money orders or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services, at any location other than that of a fixed and permanent place of business of his, their or its own.

"Auditor" means the Auditor of Public Accounts.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value and who in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to, the person, firm, association, partnership or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels, or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

SEC. 2. No person, firm, association, partnership or corporation shall engage in the business of a community currency exchange or in the business of an ambulatory cur-

visions of this Section, and shall otherwise fully comply with all of the provisions of this Act relating to the application for a currency exchange license, the Auditor may issue to such applicant a currency exchange license. Any currency exchange license theretofore issued to a currency exchange, for which an application for a license shall be sought under the provisions of this Section, if not previously surrendered, lapsed, or revoked, shall be surrendered, revoked or otherwise terminated before a license shall be issued pursuant to application made therefor under this Section.

Sec. 5. Before any license shall be issued to a community currency exchange the applicant shall file annually with and have approved by the Auditor a surety bond, issued by a bonding company or insurance company authorized to do business in this State in the principal sum of $3,000.00. Such bond shall run to the Auditor and shall be for the benefit of any creditors of such currency exchange for any liability incurred by the currency exchange on any money orders issued or sold by the currency exchange and for any liability incurred by the currency exchange for any sum or sums due to any payee or endorsee of any check, draft or money order left with the currency exchange for collection, and for any liability incurred by the currency exchange in connection with the rendering of any of the services referred to in Section 3 of this Act.

If after the expiration of one year from the issuance of the license the Auditor shall determine that the average amount of such liability during said year has exceeded the sum of $4,000.00 and has been less than $5,000.00, the Auditor shall require the licensee to furnish a bond for the ensuing year to be approved by the Auditor in the principal sum of $4,000.00. If such average amount is in excess of $5,000.00 the bond shall be for an additional principal sum of $1,000.00 for each $1,000.00 or fraction thereof in excess

of the original $5,000.00; however, the maximum amount of such bond shall not exceed the principal sum of $25,000.00.

Sec. 6. Every applicant for a license hereunder shall, after his application for a license has been approved, file with and have approved by the Auditor, a policy or policies of insurance issued by an insurance company or indemnity company authorized to do business under the laws of this State, which shall insure the applicant against loss by burglary, larceny, robbery, forgery or embezzlement in a principal sum as hereinafter provided; if the average amount of cash and liquid funds to be kept on hand in the office of the community currency exchange during the year will not be in excess of $2,500 the policy or policies shall be in the principal sum of $2,500. If such average amount will be in excess of $2,500, the policy or policies shall be for an additional principal sum of $500 for each $1,000 or fraction thereof of such excess over the original $2,500, provided that the maximum amount of such insurance shall in no event exceed the principal sum of $35,000.00. From time to time the Auditor may determine the amount of cash and liquid funds on hand in the office of any community currency exchange and shall require the licensee to submit additional policies if the same are determined to be necessary in accordance with the requirements of this section.

Any such policy or policies, with respect to forgery, may carry a condition that the community currency exchange assumes the first $50 of each claim thereunder.

Sec. 7. Each community currency exchange shall have, at all times, a minimum sum of $3,000 of its own cash funds available for the uses and purposes of its business and said minimum sum shall be exclusive of and in addition to funds received for exchange or transfer; and in addition thereto each such licensee shall at all times have on hand an amount of liquid funds sufficient to pay on demand all outstanding money orders issued by it.

change shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

Sec. 10. The applicant, and its officers and directors if a corporation, shall be vouched for by two reputable citizens of this State setting forth that the individual mentioned is (a) personally known to them to be trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own or become associated with a currency exchange, (c) that he has a good business reputation and is worthy of a license. Thereafter, the Auditor shall, upon approval of the application filed with him, issue to the applicant qualifying under this Act, a license to operate a currency exchange. If it is a license for a community currency exchange, the same shall be valid only at the place of business specified in the application. If it is a license for an ambulatory currency exchange, it shall entitle the applicant to operate only at the location or locations specified in the application; provided the applicant shall secure separate and additional licenses for each of such locations. Such licenses shall remain in full force and effect, until they are surrendered by the licensee, or revoked, or expire, as herein provided. If the Auditor shall not so approve, he shall not issue such license or licenses and shall notify the applicant of such denial, retaining the \$200 investigation fee to cover the cost of investigating the applicant. The Auditor shall approve or deny every application hereunder within ninety days from the filing thereof; except that in respect to an application by an approved ambulatory currency exchange for a license with regard to a particular location to be served by it, the same shall be approved or denied within twenty days from the filing thereof.

No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the

Auditor shall, within twenty days thereafter, prepare and keep on file in his office a written order of denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and shall send by United States mail a copy thereof to the applicant at the address set forth in the application, within five days after the filing of such order. A review of any such decision may be had as provided in Section 22.01 of this Act.

Sec. 10.1. For the purposes of this Act, the Auditor, and the hearing officer, as hereinafter provided, shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all documentary evidence relating to any matter under hearing pursuant to this Act; and shall issue such subpoenas at the request of any interested party. The hearing officer may sign subpoenas in the name of the Auditor.

The Auditor may, in his discretion, direct that any hearing pursuant to this Act, shall be held before a competent and qualified agent of the Auditor, whom the Auditor shall designate as the hearing officer in such matter. The Auditor, and the hearing officer, are hereby empowered to, and shall, administer oaths and affirmations to all witnesses appearing before them. The hearing officer, upon the conclusion of the hearing before him, shall certify the evidence to the Auditor.

Any Circuit Court of this State, within the jurisdiction of which such hearing is carried on, may, in case of contumacy, or refusal of a witness to obey a subpoena, issue an order requiring such witness to appear before the Auditor, or the hearing officer, or to produce documentary evidence, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Sec. 11. Such license, if issued for a community currency exchange, shall state the name of the licensee and the ad-

Sec. 23. If any licensee, or agent or employee of a licensee, fraudulently takes and secretes any money, note, bill, bond or other property belonging to another and in the possession and custody of such licensee as agent or otherwise, he shall be guilty of larceny and punished accordingly.

Sec. 24. Any person, firm, association, partnership or corporation who or which shall violate any provision of this Act for which no other penalty is herein prescribed shall, upon conviction, be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and each violation shall constitute a separate offense.

Sec. 25. Any community currency exchange in existence upon the date of the passage of this Act shall be approved by the Auditor as to location, if all other requirements set forth in this Act shall have been complied with.

Sec. 26. The sum of one hundred thousand dollars ($100,000.00), or so much thereof as may be necessary, is appropriated to the Auditor of Public Accounts for the purpose of administering the provisions of this Act.

Sec. 27. Nothing contained in this Act shall be construed so as to limit the power of municipalities to license and tax community currency exchanges, and to regulate their location and operation in a manner not inconsistent with this Act.

Sec. 28. Unless an ambulatory currency exchange shall engage in the business of selling or issuing money orders under his, their or its name, or any money orders other than those excepted in Section 1 of this Act, Sections 5, 6 and 7 of this Act shall not be applicable to it. Otherwise, said sections shall apply to it, if it shall engage in such business.

Sec. 29. The operation of any unlicensed community or ambulatory currency exchange, or the unlawful conduct or operation of any licensed community or ambulatory cur-

tion or remedy available to a licensee or to the Auditor under Sections 15, 15.1 or 15.2 of this Act.

Sec. 14. Every licensee shall, on or before November 15, pay to the Auditor the annual license fee or fees for the next succeeding calendar year and shall at the same time file with the Auditor the annual report required by Section 16 of this Act, and the annual bond or bonds, and the insurance policy or policies as and if required by this Act. The annual license fee for each community currency exchange shall be $50.00. The annual license fee for each location served by an ambulatory currency exchange shall be $10.00.

Sec. 15. The Auditor may, upon ten (10) days notice to the licensee by United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the required bond or bonds or insurance policy or policies or to comply with any order, decision, or finding of the Auditor made pursuant to this Act; or that

(b) The licensee has violated any provision of this Act or any regulation or direction made by the Auditor under this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Auditor in refusing the issuance of the license; or that

(d) The licensee has not operated the currency exchange licensed, for a period of sixty consecutive days, unless the licensee was prevented from operating during such period by reason of events or acts beyond the licensee's control.

The Auditor may revoke only the particular license or licenses for particular places of business or locations with respect to which grounds for revocation may occur or exist, or if he shall find that such grounds for revocation are of general application to all places of business or locations, or to more than one place of business or location operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply, as the case may be.

A licensee may surrender any license by delivering to the Auditor written notice that he, they or it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on his, their or its bond or bonds, or his, their or its policy or policies of insurance, required by this Act, or entitle such licensee to a return of any part of the annual license fee or fees.

Every license issued hereunder shall remain in force until the same shall expire, or shall have been surrendered or revoked in accordance with this Act, but the Auditor may on his own motion, issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Auditor in refusing originally the issuance of such license under this Act.

No license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Auditor shall within twenty (20) days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation, and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five (5) days after the filing in his office of such order, finding or decision. A review of any such

order, finding or decision may be had as provided in Section 22.01 of this Act.

Sec. 15.1. If the Auditor determines that any licensee is insolvent or is violating this Act, he shall appoint a receiver, who shall, under his direction, for the purpose of the receivership, take possession of and title to the books, records and assets of every description of said community currency exchange. The Auditor shall require of the receiver such security as he deems proper and, upon appointment of the receiver, shall have published, once each week for four consecutive weeks in a newspaper having a general circulation in the community, a notice calling on all persons who have claims against the community currency exchange to present them to the receiver.

Within ten days after the receiver takes possession of the property, the licensee may apply to the Circuit Court of Sangamon County to enjoin further proceedings in the premises.

The receiver may operate the community currency exchange until the Auditor determines that possession should be restored to the licensee or that the business should be liquidated. If the Auditor determines that the business should be liquidated he shall direct the Attorney General to file a bill in the Circuit Court of the county in which such community currency exchange is located, in the name of the People of the State of Illinois, for the orderly liquidation and dissolution of the community currency exchange and for an injunction restraining the licensee or the officers and directors thereof from continuing the operation of said community currency exchange.

The receiver shall, thirty days from the day the Auditor determines that the business should be liquidated, file with the Auditor and with the clerk of such court as may have charge of the liquidation, a correct list of all creditors who have not presented their claims. The list shall show the

amount of the claim after allowing all just credits, deductions and set-offs as shown by the books of the currency exchange. These claims shall be deemed proven unless objections are filed by some interested party within the time fixed by the Auditor or court that has charge of the liquidation.

The Auditor may make a ratable dividend of the moneys collected by the receiver on all claims that have been proved to his satisfaction or adjudicated in a court of competent jurisdiction whenever moneys are available for distribution.

All unclaimed dividends shall be deposited with the Auditor to be paid out by him when proper claims therefor are presented to the Auditor, and the Auditor shall pay the same out of such sums or funds so deposited with him. After one year from the final dissolution of the currency exchange, the Auditor shall make a pro-rata distribution thereof to those claimants who have accepted dividends until such claim or claims are paid in full, and if any of said monies shall then remain in his hands, the Auditor shall distribute same pro-rata to the owner, owners or stockholders of the currency exchange. The Auditor shall deduct, from the funds so deposited with him the expenses of distributing same.

Upon the order of a court of competent jurisdiction of the county wherein the community currency exchange is located, the receiver may sell or compound any bad or doubtful debt, and on like order may sell the personal property of the community currency exchange on such terms as the court approves. The receiver shall succeed to whatever rights or remedies the unsecured creditors of the currency exchange may have against the owner or owners, operators, stockholders, directors, or officers thereof, arising out of their claims against the currency exchange; provided, however, that nothing herein contained shall prevent such creditors from filing their claims in the liquidation proceed-

ing. The receiver may enforce such rights or remedies in any court of competent jurisdiction.

At the close of the receivership, it shall be the duty of the receiver to turn over to the Auditor all books of account and ledgers of such currency exchange for preservation. All records of such receiverships heretofore and hereafter received by the said Auditor shall be held by him for a period of two years after the close of the receivership and at the termination of said two year period may then be destroyed.

All expenses of the receivership, including reasonable receiver's, solicitor's and attorney's fees, approved by the Auditor, shall be paid out of the assets of the community currency exchange; and all expenses of any preliminary or other examinations into the condition of the community currency exchange or receivership, and all expenses incident to the possession and control of any property or records of the community currency exchange incurred by the Auditor shall be paid out of the assets of the community currency exchange. The foregoing expenses shall be paid prior to and ahead of all claims.

Upon the filing of a complaint by the Attorney General for the orderly liquidation and dissolution of a community currency exchange, as herein provided, all pending suits and actions upon unsecured claims against such currency exchange shall abate; provided, however, that nothing contained herein shall prevent such claimants from filing their claims in the liquidation proceeding. In the event a suit or an action is instituted or maintained by the receiver on any bond or policy of insurance issued pursuant to the requirements of this Act, the bonding or insurance company sued, shall not have the right to interpose or maintain any counterclaim based upon subrogation, or upon any express or implied agreement of, or right to, indemnity or exoneration, or upon any other express or implied agreement with,

or right against, the currency exchange. Nothing herein contained shall prevent such bonding or insurance company from filing such claim in the liquidation proceeding.

Sec. 15.2 No community currency exchange shall determine its affairs and close up its business unless it shall first deposit with the Auditor an amount of money equal to the whole of its debts, liabilities and lawful demands against it, including the costs and expenses of this proceeding, and shall surrender to the Auditor its community currency exchange license, and shall file with the Auditor a statement of termination signed by the licensee of such community currency exchange, containing a pronouncement of intent to close up its business and liquidate its liabilities, and also containing a sworn list itemizing in full all such debts, liabilities and lawful demands against it. Corporate licensees shall attach to, and make a part of such statement of termination, a copy of a resolution providing for the determination and closing up of the licensee's affairs, certified by the secretary of such licensee and duly adopted at a shareholders' meeting by the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting. Upon the filing with the Auditor of a statement of termination the Auditor shall cause notice thereof to be published once each week for three consecutive weeks in a public newspaper of general circulation published in the city or village where such community currency exchange is located, and if no newspaper shall be there published, then in a public newspaper of general circulation nearest to said city or village; and such publication shall give notice that the debts, liabilities and lawful demands against such community currency exchange will be redeemed by the Auditor on demand in writing made by the owner thereof, at any time within three years from the date of first publication. After the expiration of such three year period, the Auditor shall return to the person or persons designated in the

statement of termination to receive such repayment and in the proportion therein specified, any balance of money then remaining in his possession, if any there be, after first deducting therefrom all unpaid costs and expenses incurred in connection with this proceeding. The Auditor shall receive for his services, exclusive of costs and expenses, two per cent of any amount up to $5,000.00, and one per cent of any amount in excess of $5,000.00, deposited with him hereunder by any one community currency exchange. Nothing contained herein shall affect or impair the liability of any bonding or insurance company on any bond or insurance policy issued under this Act relating to such community currency exchange.

Sec. 16. Each licensee shall annually, on or before the fifteenth day of November, file a report with the Auditor for the fiscal year period from October 1st through September 30th (which shall be used only for the official purposes of the Auditor) giving such relevant information as the Auditor may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding fiscal year period of each licensed currency exchange conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Auditor and the Auditor may at any time and shall at least once in each year investigate the currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a currency exchange. For that purpose, the Auditor shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporations and to the officers and directors thereof that shall relate to such currency exchange business. The Auditor may at any time, and shall at least, once a year, inspect the locations served by an ambulatory currency

exchange, for the purpose of determining whether such currency exchange is complying with the provisions of this Act at each location served. The Auditor may require by subpoena the attendance of and examine under oath all persons whose testimony he may require relative to such business, and in such cases the Auditor, or any qualified representative of the Auditor whom the Auditor may designate, may administer oaths to all such persons called as witnesses, and the Auditor, or any such qualified representative of the Auditor, may conduct such examinations, and there shall be paid to the Auditor for each such examination a fee of $20.00 for each day or part thereof for each qualified representative designated and required to conduct the examination; provided, however, that in the case of an ambulatory currency exchange, such fee shall not be increased by reason of the number of locations served by it.

Sec. 17. Every licensee shall keep and use in his business such books, accounts and records as will enable the Auditor to determine whether such licensee is complying with the provisions of this Act and with the rules, regulation and directions made by the Auditor hereunder.

Sec. 18. The applicant for a community currency exchange license shall have a permanent address as evidenced by a lease of at least six months duration or other suitable evidence of permanency, and the license issued, pursuant to the application shall be valid only at that address or any new address approved by the Auditor.

Sec. 19. The Auditor may make and enforce such reasonable, relevant regulations, directions, orders, decisions and findings as may be necessary for the execution and enforcement of this Act and the purposes sought to be attained herein. All such regulations, directions, orders, decisions and findings shall be filed and entered by the Auditor in an indexed permanent book or record, with the effective date thereof suitably indicated, and such book of

record shall be a public document. All regulations and directions, which are of a general character, shall be printed and copies thereof mailed to all licensees within ten (10) days after filing as aforesaid. Copies of all findings, orders and decisions shall be mailed to the parties affected thereby by United States mail within five (5) days of such filing.

Sec. 19.1. Whenever an ambulatory currency exchange shall be actively engaged at any place or station on a location licensed under this Act in the cashing of checks other than from within an armored vehicle, such currency exchange shall provide at least one armed guard at each such place or station in addition to the person or persons cashing checks.

Sec. 19.2. Before any license or renewal of license shall be issued for any location served by an ambulatory currency exchange, the applicant thereof shall file with and have approved by the Auditor a surety bond for each such location, issued by a bonding or insurance company, licensed to do business in this State, in the penal sum of $2,000.00. The bond shall be conditioned that the licensee serving the location shall comply with Section 19.1 of this Act and shall pay all lawful claims for money or other property loss, or bodily injury, suffered in the course and by reason of a holdup at such location, that shall occur at the time or times when said licensee failed to comply with said Section 19.1. Such bond shall run to the Auditor and shall inure to the benefit of any person or persons who shall establish a lawful claim or claims as aforesaid. The applicant shall have the right, at his, their, or its option, to file in lieu of the bond or bonds required by this section, a blanket surety bond, which he, they, or it shall have approved by the Auditor, issued by a bonding or insurance company, licensed to do business in this State, covering all the locations served and to be served by such applicant, in

a penal sum of not to exceed $100,000.00, conditioned and payable as aforesaid, and specifying that the liability thereunder for each location shall be limited to $2,000.00.

Sec. 20. Every person having taken an oath in any proceeding or matter wherein an oath is required by this Act, who shall swear wilfully, corruptly or falsely in a matter material to the issue or point in question, or shall suborn any other person to swear as aforesaid, shall be guilty of perjury or subornation of perjury, as the case may be.

Sec. 21. Except as otherwise provided for in this Act, whenever the Auditor is required to give notice to any applicant or licensee, such requirement shall be complied with if, within the time fixed herein, such notice shall be enclosed in an envelope plainly addressed to such applicant or licensee, as the case may be, at the address set forth in the application or license, as the case may be, United States postage fully prepaid, and deposited, registered, in the United States mail.

Sec. 22. Repealed by Act approved June 9, 1949, effective January 1, 1950.

Sec. 22.01. All final administrative decisions of the Auditor hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act," approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act."

Sec. 22.02. Appeals from all final orders and judgments entered by a court in review of any final administrative decision of the Auditor hereunder may be taken directly to the Supreme Court by either party to the action in accordance with the provisions of the "Civil Practice Act" relating to appeals, and all existing and future amendments and modifications thereof and the rules adopted pursuant thereto.

rency exchange is hereby declared to constitute unfair competition with licensed and legally operated currency exchanges doing business in the same community. Any licensee operating legally under this Act in the same community shall have the right to apply to any court of competent jurisdiction for and obtain an injunction restraining such unfair competition.

SEC. 30. If any part or provision of this Act shall be declared unconstitutional, the unconstitutionality of such part or provision shall not invalidate the constitutional provisions of this Act.